

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 * * *

4 ANTHONY CASTRO,

5 Plaintiff,

Case No. 3:21-cv-00158-CLB¹

6 v.

7 NEVADA DEPARTMENT OF
8 CORRECTIONS, *et. al.*,

9 Defendants.

**ORDER DENYING MOTION TO AMEND
AND MOTION TO COMPEL**

[ECF Nos. 50, 53]

10 Before the Court is Plaintiff Anthony Castro’s (“Castro”) motion to amend, (ECF
11 Nos. 50, 50-1).² Defendants Troy Harris (“Harris”), Kevin Jones (“Jones”), and Maria Ward
12 (“Ward”) (collectively referred to as “Defendants”), filed an opposition, (ECF No. 51), and
13 Castro replied (ECF No. 52). Also pending before the Court is Castro’s motion to compel
14 (ECF No. 53). Defendants responded, (ECF No. 54), and no reply was filed. For the
15 reasons discussed below, the motion to amend, (ECF No. 50), and the motion to compel,
16 (ECF No. 53), are denied.

17 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

18 Castro is an inmate in the custody of the Nevada Department of Corrections
19 (“NDOC”). On April 5, 2021, Castro filed a civil rights complaint under 42 U.S.C. § 1983
20 for events that occurred while Castro was incarcerated at the Lovelock Correctional Center
21 (“LCC”). (ECF No. 1-1.) On May 17, 2021, Castro filed an amended complaint, (ECF No.
22 5), which the District Court screened pursuant to 28 U.S.C. § 1915A. (ECF No. 9.) The
23 screening order allowed Castro to proceed on a single First Amendment retaliation claim

25
26 ¹ The parties consented to having the undersigned conduct all proceedings and order
27 the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Federal Rule of
Civil Procedure 73. (ECF No. 36.)

28 ² ECF No. 50 is the motion to amend and ECF No. 50-1 is the proposed second
amended complaint.

1 against Defendants Ward, Jones, and Harris. (*Id.* at 11.) The Court dismissed, without
2 prejudice, Defendants Bartell, Lt. Carpenter, Wake, Bellinger, Garrett, Daniels, Baker, and
3 Tara Carpenter because there were no allegations against them in the amended
4 complaint. (*Id.*) Additionally, the Court dismissed several other claims, without prejudice,
5 based on improper joinder and directed Castro to assert those claims in a separate case.
6 (*Id.* at 8-9.)

7 In relation to the retaliation claim, the amended complaint alleged the following:
8 Castro was housed at LCC and was a member of the Structured Living Program (“SLP”).
9 (ECF No. 5 at 7.) Senior Correctional Officer Jones was the drill instructor of SLP. (*Id.*)
10 Ward was the caseworker specialist II in charge of SLP. (*Id.*) Jones and Ward fostered an
11 atmosphere of anxiety and stress. (*Id.*) They subjected inmates to exhausting and
12 strenuous exercises known as “Big 5’s” and “hell weeks” where they forced inmates to
13 exercise five to six hours straight, six days in a row. (*Id.*)

14 Every SLP inmate was required to attend “battalion day” on September 9, 2019.
15 (*Id.*) That day, Jones berated Castro and the other SLP inmates and called them “a bunch
16 of fucking girls,” “pussies,” “pansies,” and told them “to grow the fuck up.” (*Id.*) Castro told
17 Jones that he was not allowed to speak to them in such a manner. (*Id.* at 8.) Jones told
18 Castro that he could do “whatever the fuck [he liked], take your sorry ass back to the unit,”
19 and Castro complied. (*Id.*)

20 Upon instruction, Castro reported to the activity unit where Jones and several
21 inmates with different “ranks” within the SLP program unit were. (*Id.*) There was a “panel”
22 on the desk and three “panels” terminated an inmate’s participation in the program. (*Id.*)
23 When Castro went to read what the panel was, Jones began swearing at Castro, grabbed
24 the panel from the desk, and told Castro to sign a drop-out request form which stated that
25 Castro wanted to leave the program. (*Id.*) Jones swore and yelled at Castro for several
26 minutes. (*Id.*) When Castro asked to speak to a sergeant, Jones refused. (*Id.*) When
27 Castro asked for a grievance, Jones responded, “I’m not calling a fucking sergeant and
28 it’s not my responsibility to give you a grievance . . . you need to lock the fuck down.” (*Id.*)

1 Castro complied. (*Id.*)

2 After count, Jones went to Castro's cell and removed Castro's SLP program
3 belongings, then returned to the cell, intentionally knocked over Castro's television, broke
4 several buttons, and cracked the top of the television. (*Id.*) Jones told Castro that he was
5 a "fuck up who [would] never amount to shit." (*Id.*)

6 The next day, Castro reported to Ward's office where Ward and Jones were waiting.
7 (*Id.* at 8-9.) Ward told Castro that she was removing Castro from SLP. (*Id.* at 9.) When
8 Castro tried to explain, Ward yelled, "You want a grievance? Well, I got something for you,
9 you're not getting one and when you do file, I promise I'll make your life miserable and
10 there's nothing you can do, it's our word against yours." (*Id.*)

11 Ward asked Castro, "How do you like intake?" (*Id.*) Intake was in Unit 4B and was
12 reserved for inmates just arriving to LCC or inmates who had been sanctioned for major
13 and general rule violations. (*Id.*) Intake had less access to religious services and work
14 assignments; had no access to education, gym, or programs; and had less yard and tier
15 time. (*Id.*) In contrast, the unit Castro was in had access to jobs and programs, open tier
16 from 6:00 a.m. to 10:00 p.m., open yard from 8:00 a.m. to 3:00 p.m., and access to gym,
17 education, and religious services throughout the day and night. (*Id.*)

18 After obtaining a grievance, Castro filed a grievance on September 15, 2019,
19 alleging retaliation, destruction of property, and verbal abuse. (*Id.* at 10.) Ward intercepted
20 the grievance and denied it herself on September 18, 2019. (*Id.*) That same day,
21 Correctional Officer Trainee Harris asked Castro and Castro's cell mate to step out of their
22 cell. (*Id.*) When Castro asked what was happening, Harris responded, "I got a call to tear
23 your house up." (*Id.*) Harris then dumped all of Castro's belongings on the ground including
24 clothes, legal work, commissary, bedding, personal pictures, religious items, and a
25 program from Castro's deceased grandmother's funeral. (*Id.*) Harris walked on all the
26 items and confiscated Castro's television. (*Id.*) As Harris departed, he said, "stop filing
27 grievances." (*Id.*) Harris never touched Castro's cell mate's property. (*Id.*) After Harris left,
28 Castro filed another grievance that nobody ever responded to. (*Id.*)

1 The screening order allowed Castro to proceed on the single retaliation claim based
2 on Castro's allegations that Castro tried to obtain a grievance from Jones to report Jones's
3 behavior. Instead of obtaining a grievance from Jones or Ward, Ward transferred Castro
4 to a restrictive unit because Castro wanted to file a grievance. Additionally, it appears that
5 after Castro was able to file a grievance, Ward or Jones had Harris destroy the property
6 in Castro's cell. (ECF No. 9 at 7.)

7 Defendants Jones and Ward filed their answer to the amended complaint on April
8 25, 2022, (ECF No. 31), which Defendant Harris joined. (ECF No. 46.) Pursuant to the
9 scheduling order, Castro had until July 22, 2022 to amend his pleading. (ECF No. 38.) On
10 July 21, 2022, Castro filed a motion to amend and motion to extend time to amend, (ECF
11 Nos. 47, 48). The Court ultimately denied the motion to amend, (ECF No. 47), with leave
12 to refile, and extended the deadline to amend to September 22, 2022. (ECF No. 49.) Thus,
13 on August 22, 2022, Castro filed the instant motion to amend. (ECF No. 50.) Defendants
14 opposed the motion, (ECF No. 51), and Castro replied, (ECF No. 52). Additionally, Castro
15 filed a motion to compel, (ECF No. 53), to which Defendants responded, (ECF No. 54).
16 No reply was filed. The Court discusses each motion in turn.

17 **II. MOTION TO AMEND**

18 **A. LEGAL STANDARD**

19 Federal Rule of Civil Procedure 15(a)(2) instructs that "[t]he court should freely give
20 leave [to amend a pleading] when justice so requires," and there is a strong public policy
21 in favor of permitting amendment. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999).
22 The Ninth Circuit has made clear that Rule 15(a) is to be applied with "extreme liberality."
23 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (*per curiam*).
24 Under Rule 15(a), courts consider various factors, including: (1) bad faith; (2) undue delay;
25 (3) prejudice to the opposing party; (4) the futility of the amendment; and (5) whether the
26 plaintiff has previously amended his complaint. See *id.* at 1052. The factors do not weigh
27 equally; as the Ninth Circuit has explained, prejudice receives greatest weight. See *id.*
28 Defendants bear the burden of establishing prejudice, and absent its presence or a "strong

1 showing" under the other factors, there is a presumption in favor of permitting amendment.

2 *Id.* (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186-87 (9th Cir. 1987)).

3 When considering prejudice, the court may weigh against the movant the amended
 4 pleading's great alteration of the litigation's nature and its effect of requiring an entirely
 5 new course of defense. *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079
 6 (9th Cir. 1990). Alone, such alteration is not fatal. *Id.* In contrast, futility "alone can justify
 7 the denial of a motion for leave to amend." *Nunes v. Ashcroft*, 375 F.3d 805, 809 (9th Cir.
 8 2003). Futility arises when the amendment is legally insufficient, *Miller v. Rykoff-Sexon, Inc.*, 845 F.3d 209, 214 (9th Cir. 1988), or "where the amended complaint would . . . be
 9 subject to dismissal[.]" *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir.
 10 1998).

12 **B. DISCUSSION**

13 Castro's proposed second amended complaint ("SAC") asserts one claim for
 14 retaliation under the First Amendment for (1) the confiscation and destruction of his
 15 personal property, (2) the transfer to more restrictive housing, (3) "the calculated harassing
 16 cell searches unrelated to prison needs" and (4) "the implementation of a policy or custom
 17 that allowed interdepartmental staff at LCC directly associated with the Structured Living
 18 Program to circumvent Administrative Regulations in order to thwart official investigations
 19 into staff misconduct." (ECF No. 50 at 2-3.) Castro's proposed SAC provides supplemental
 20 and clarifying facts to show how several dismissed defendants are "liable for violating his
 21 constitutional rights." (*Id.* at 4.)

22 Many of the factual allegations in Castro's proposed SAC are nearly identical to his
 23 amended complaint. (Compare ECF No. 50-1 at 7-15, with ECF No. 5 at 7-10.) However,
 24 the SAC seeks to include Defendants Warden Renee Baker, Correctional Caseworker
 25 Specialist II Kelly Bellanger, Associate Warden Tara Carpenter, and Associate Warden
 26 Tim Garrett Defendants Baker, Carpenter, Garrett, and Bellanger for a "written policy" that
 27 allowed interdepartmental staff at LCC to thwart official investigations into staff
 28 misconduct—in relation to Ward's alleged "interception" of Castro's grievance. (ECF No.

1 50-1 at 15-18.) Castro seeks to add Defendant Inspector General James Jones based on
2 his failure to investigate allegations of misconduct against K. Jones. (*Id.* at 21.) Finally,
3 Castro seeks monetary relief from Defendants, declaratory relief stating Defendants
4 violated Castro's civil rights, and injunctive relief to change the grievance procedures set
5 forth in the SLP Operation Manual. (*Id.* at 24-25.)

6 Defendants oppose the motion because they assert amendment would be futile
7 and alternatively, Defendants argue if the Court grants the motion, the Court should screen
8 the proposed SAC. (ECF No. 51.) Specifically, Defendants assert that Castro fails to allege
9 sufficient facts showing the proposed defendants took any adverse action against him
10 because of his protected activity, and instead, Castro appears to bring forth a Fourteenth
11 Amendment due process claim based on implementation of a policy that allowed NDOC
12 staff to thwart official investigations into staff misconduct. (*Id.* at 3-4.)

13 Having reviewed Castro's proposed pleading the Court finds that the motion to
14 amend, (ECF No. 50) should be denied, as the proposed amended complaint fails to state
15 a claim and is therefore futile. While Castro attempts to add additional defendants to his
16 claim, the District Court significantly limited the scope of his complaint through initial
17 screening. As Defendants argue, Castro's proposed changes are more akin to a
18 Fourteenth Amendment due process claim, rather than a First Amendment retaliation
19 claim. However, inmates have no standalone due process rights related to the
20 administrative grievance process. See *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988)
21 (holding that a state's unpublished policy statements establishing a grievance procedure
22 do not create a constitutionally protected liberty interest); *Ramirez v. Galaza*, 334 F.3d
23 850, 860 (9th Cir. 2003) (holding that there is no liberty interest in the processing of
24 appeals because there is no liberty interest entitling inmates to a specific grievance
25 process). Because the Court finds that amendment would be futile, the motion is denied.
26 See *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1059 (9th Cir. 2018) (a motion for
27 leave to amend a complaint may be denied if the proposed amendment is futile or would
28 be subject to dismissal).

1 Accordingly, the amended complaint, (ECF No. 5), and the screening order on the
 2 amended complaint, (ECF No. 9), remain operative in this case. Therefore, litigation will
 3 continue to proceed on the single retaliation claim against Defendants Harris, Jones, and
 4 Ward, only.

5 **III. MOTION TO COMPEL**

6 On October 26, 2022, Castro filed a motion to compel against Defendants Jones
 7 and Ward. (ECF No. 53.) Castro's motion argues that Ward's answer to Interrogatory No.
 8 4 is evasive, and that Jones and Ward did not properly sign and verify their responses to
 9 Castro's interrogatories. (*Id.*) Defendants filed an opposition to the motion to compel,
 10 stating the motion should be denied because Defendants have provided timely responses
 11 to the written discovery requests that are subject of the motion and Jones and Ward also
 12 properly signed and verified their answers. (ECF No. 54.) Thus, Defendants argue the
 13 Motion fails to present a live discovery dispute requiring Court intervention and should be
 14 dismissed. (*Id.*) Castro did not file a reply and the time to do so has passed.

15 "[B]road discretion is vested in the trial court to permit or deny discovery." *Hallett v.*
 16 *Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). The "scope of discovery" encompasses "any
 17 nonprivileged matter that is relevant to any party's claim or defense and proportional to
 18 the needs of the case[.]" Fed. R. Civ. P. 26(b)(1). When a party fails to provide discovery
 19 and the parties' attempts to resolve the dispute without Court intervention are
 20 unsuccessful, the opposing party may seek an order compelling that discovery. Fed. R.
 21 Civ. P. 37(a). However, the party moving for an order to compel discovery bears the initial
 22 burden of informing the court: (1) which discovery requests are the subject of the motion
 23 to compel; (2) which of the responses are disputed; (3) why he believes the response is
 24 deficient; (4) why defendants' objections are not justified; and (5) why the information he
 25 seeks through discovery is relevant to the prosecution of this action. *Harris v. Kernan*, No.
 26 2:17-cv-0680-TLN-KJN-P, 2019 WL 4274010, at *1 (E.D. Cal. Sept. 10, 2019); see also
 27 *Ellis v. Cambra*, No. 1:02-cv-05646-AWI-SMS-PC, 2008 WL 860523, at *4 (E.D. Cal.
 28 2008) ("Plaintiff must inform the court which discovery requests are the subject of his

1 motion to compel, and, for each disputed response, inform the court why the information
2 sought is relevant and why defendant's objections are not justified.").

3 Having reviewed the motion to compel and response, the Court agrees with
4 Defendants that they have provided timely responses to the written discovery requests,
5 and they have also properly signed and verified their answers. As such, there is nothing
6 for this Court to compel. Accordingly, Castro's motion to compel, (ECF No. 53), is denied.

7 **IV. CONCLUSION**

8 For good cause appearing and for the reasons stated above, **IT IS ORDERED** that
9 Castro's motion to amend, (ECF No. 50), is **DENIED**.

10 **IT IS FURTHER ORDERED** that the amended complaint, (ECF No. 5), and
11 screening order on the amended complaint, (ECF No. 9), remain operative in this case.

12 **IT IS FURTHER ORDERED** that Castro's motion to compel, (ECF No. 53), is
13 **DENIED**.

14 **DATED:** December 2, 2022.

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16 **UNITED STATES MAGISTRATE JUDGE**
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